IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

....

:: JUDGMENT ::

Satender Kaur & Ors. Vs. Jagdeep Singh & Ors.

S.B.CIVIL MISC. APPEAL NO.367/1994

Against the award dated 09.02.1994 made by the Motor Accidents Claims Tribunal, Sriganganagar in Claim Case No.95/1987.

Date of Judgment ::: 31st May 2007

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Vijay Agarwal, for the appellants.

Mr.B.S.Sandhu)
Mr.Sanjeev Johari with)
Ms.Meenakshi Maheshwari), for the respondents.

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Reportable **BY THE COURT:**

This appeal has been preferred by the claimants against the award dated 09.02.1994 made by the Motor Accidents Claims Tribunal, Sri Ganganagar in Claim Case No.95/1987 whereby the Tribunal has awarded compensation on account of accidental death of Amrik Singh (30 years), husband of the claimant No.1 and father of the claimants Nos.2 & 3 in the

sum of Rs.50,000/- together with interest @ 12% per annum from the date of filing of claim application against the transferee owner, driver, and insurer of the vehicle involved in accident.

The claimants, wife and two minor children of the vehicular accident victim Amrik Singh, submitted the claim application on 04.03.1987 on the averments with reference to an FIR lodged by Gopi Ram (non-applicant No.5) that on 04.12.1986 at about 7.00 a.m., while he (Gopi Ram) was taking his tractor bearing registration No. RRK 6169 towards Anupgarh, an oncoming jeep bearing registration No. RRK 233 hit against the trolley of the tractor and came to halt 20 paces ahead; the tractor driver and his brother reached the jeep whose driver stated his name Kewal Kumar and it was found that Amrik Singh, an occupant of the jeep had expired due to head injuries and another occupant Paramjeet Singh sustained injuries; and that the accident was caused by rash and negligent driving of the jeep that led to the death of Amrik Singh.

The claimants submitted that the deceased Amrik Singh alias Sohan Singh was about 30 years of age; that he was working with one Metalco Company at Dubai getting monthly salary of 1,000 Dirhams apart from perks; that he was earning equivalent to about Rs.3,500/- per month; and that the

deceased was sending about Rs.20,000/- to Rs.25,000/- per annum to his family residing at Chak 20BB (III), Tehsil Padampur. In the claim application, the claimants arrayed non-applicant No.1 Jagdish Lal as the registered owner, non-applicant No.2 Jagdeep Singh as the transferee owner, non-applicant No.3 Kewal Kumar as the driver, and non-applicant No.7 National Insurance Company Limited as the insurer of the jeep involved in accident bearing registration number RRK 233. The claimants also joined non-applicant No.4 Hansraj as the registered owner, non-applicant No.5 Gopi Ram as the driver, and non-applicant No.6 New India Assurance Company Limited as the insurer of the tractor involved in accident bearing registration No. RRK 6169 and stated liability of all the non-applicants towards compensation for pecuniary and non-pecuniary losses at Rs.12,50,000/-. It may be pointed out that there had been addition of parties in the claim case whereby non-applicant No.1A Sadhu Singh was impleaded as another transferee owner of the jeep whereas non-applicants Nos.5A and 5B Rameshwar Lal and Meera Devi were impleaded as the owners of the tractor involved in accident.

In reply to the claim application, the non-applicant No.1 Jagdish Lal while stating general denial of the claim averments maintained that the mother of the deceased was available and she was a necessary party to the claim application; that he

had sold the jeep RRK 233 to Sadhu Singh on 21.01.1986 for Rs.23,500/- and handed over possession of the vehicle and, therefore, the said transferee was the true owner of the vehicle; and that he (the non-applicant No.1) had no relation with the jeep and the jeep driver was not in his employment. As noticed above, Sadhu Singh, the alleged transferee from the non-applicant No.1 was added as non-applicant No.1A. However, the said non-applicant Sadhu Singh chose not to appear and was proceed ex parte on 28.08.1990.

The non-applicant No.2 Jagdeep Singh, while stating general denial of the claim averments, admitted his being the owner of the jeep but asserted that the accident occurred for the tractor driver plying with over loaded trolley and without valid licence. The non-applicant No.3 Kewal Kumar admitted his being the driver of the jeep and Jagdeep Singh being its owner but again asserted that the accident occurred for the fault of the tractor driver.

The insurer of the jeep non-applicant No.7 in its reply, while stating general denial of the claim averments submitted, inter alia, that according to its record, Jagdish Lal was the owner of the jeep; and as per the assertion of the claimants, the jeep had been purchased by Jagdeep Singh and, therefore, Jagdish Lal did not remain owner of the vehicle and insurance coverage was not transferred in the name of the

purchaser Jagdeep Singh. It was also submitted that the insurance company has not assumed the risk for the passengers in the jeep and the insurance policy was covering only third party risk.

On the other hand, the non-applicants Nos.4 and 5 Hansraj and Gopiram, owner and driver of the tractor asserted that the accident occurred for rash and negligent driving of the jeep and also pointed out that the tractor was insured with New India Assurance Company Limited under insurance policy dated 01.08.1986. The non-applicant No.6, insurer of the tractor, in its reply submitted that the said tractor was insured in the name of Rameshwar Das and Meera Devi whereas in the claim application Hansraj was shown as the owner of the tractor and it appeared that the tractor was purchased by Hansraj before accident but insurance cover was not transferred in his name and, therefore, the insurer was not liable. The non-applicants Nos. 5A & 5B, Rameshwar Lal and Meera Devi, were impleaded as owners of the tractors by the order dated 08.05.1992. The non-applicant No. 5A did not file any reply but by way of an application dated 15.09.1992 (placed in part D of record at page 42) stated that his mother Meera Devi (non-applicant No. 5B) had expired and that the tractor in question had already been sold to Hansraj and Gopi Ram on 11.08.1986.

Issues framed in this case with their corrected burden as stated in the impugned award read as under:-

"(1) आया प्रार्थीगण मृतक अमरीकसिंह उर्फ सोहनसिंह के विधिक उत्तराधिकारी है ?

-प्रार्थीगण

(2) क्या अप्रार्थी गोपीराम चालक ने अप्रार्थी हंसराज के स्वामित्व के ट्रेक्टर नं0 आर आर के 6169 को दिनांक 4-12-86 की सुबह सात बजे या उसके लगभग गंगानगर-पदमपुर सरकारी रोड पर चूनावढ से गंगानगर की तरफ करीब डेढ किलोमीटर की जगह पर उतावलेपन या उपेक्षा से चलाकर जीप नं0 आर आर के 233 में सवार अमरीकसिंह उर्फ सोहनसिंह को दुर्घटनाग्रस्त कर उसकी मृत्यु कारित की ?

-प्रार्थीगण

(3) क्या उक्त दिवस, समय एवं स्थान पर अप्रार्थी जगदीशलाल के स्वामित्व की उक्त जीप को अप्रार्थी केवलकुमार चालक ने उतावलेपन या उपेक्षा से चलाकर उसी जीप में सवार अमरीकसिंह उर्फ सोहनसिंह को उक्त ट्रेक्टर के साथ भिडंत में दुर्घटनाग्रस्त कर उसकी मृत्यु कारित की ?

-प्रार्थीगण

(4) क्या अप्रार्थीगण केवल कुमार एवं गोपीराम दोनों द्वारा ही उपेक्षा या लापरवाही से अपने उक्त वाहनों को चलाकर उक्त दुर्घटना को कारित कर अमरीकसिंह उर्फ सोहनसिंह की मृत्यु कारित की गयी ?

-प्रार्थीगण

(5) क्या प्रार्थीगण माफिक दावा क्षतिपूर्ति की राशि रूपये 12,50,000) (साढे बारह लाख) या अन्य कोई राशि प्राप्ति के अधिकारी है ? यदि ऐसा हो तो वे किस किस प्रकार, कितनी कितनी राशि और किस किस से प्राप्त करने के अधिकारी है ?

-प्रार्थीगण

(6) क्या अप्रार्थी जगदीशलाल प्रश्नगत जीप को दिनांक 21-1-86 को साधुसिंह पुत्र हिम्मतसिंह के

पक्ष में अन्तरित (विक्रय) कर चुका है? यदि ऐसा हो तो इसका दावे पर क्या प्रभाव है ?-

-अप्रार्थी सं0 1

(7) क्या प्रश्नगत ट्रेक्टर अप्रार्थी बीमा कम्पनी के साथ रामेश्वरदास एवं मीरांबाई के नाम से बीमाकृत था और इस कारण से हंसराज अप्रार्थी और बीमा कम्पनी के बीच ट्रेक्टर के बीमे का कोई अनुबंध नहीं होने से बीमा कम्पनी क्षतिपूर्ति के लिए उत्तरदायी नहीं है ?

-अप्रार्थी बीमा कम्पनी संख्या 6

(8) क्या उक्त जीप का तीसरे पक्ष जोखिम के सम्बन्ध में ही बीमा किया हुआ होने से जीप में सवार मृतक अमरीकसिंह उर्फ सोहनसिंह की मृत्यु की क्षतिपूर्ति के लिए बीमा कम्पनी उत्तरदायी नहीं है ?

-अप्रार्थी बीमा कम्पनी सं0 7

(9) क्या ट्रेक्टर चालक के पास दुर्घटना के समय वैध लायसेन्स नहीं था और इस कारण से बीमा कम्पनी उक्त प्रकार क्षतिपूर्ति के लिए उत्तरदायी नहीं है ?

-अप्रार्थी बीमा कम्पनी सं0 6 व 7

(10) क्या बीमित पक्षों द्वारा दुर्घटना की सूचना बीमा पालिसी की शर्तों के अनुसार बीमा कम्पनी को नहीं दी गयी ? ऐसा हो इसका दावे पर क्या प्रभाव है ?

-अप्रार्थी बीमा क0 सं0 6 एवं 7

(11) अन्य अनुतोष कोई हो तो क्या होगा ?"

In evidence the claimants examined Surja Ram Bishnoi, ASI Police Station Gharsana, the investigating officer as AW-1; Jagdeep Kaur, a cousin of the claimant No.1 Satender Kaur and said to be an occupant of the jeep at the time of accident as AW-2; Harbhajan Singh, another occupant of the jeep at the time of accident as AW-3; and Guljar Singh, father of the

claimant No.1 as AW-4. On the other hand, on behalf of the non-applicants only two persons appeared in evidence, viz., Jagdish Lal, the registered owner of the jeep as NAW-1/1 and Gopi Ram, the tractor driver as NAW-4/2.

Though the aforesaid questions too many arose before the Tribunal in view of varying stands of multiple parties related with the two vehicles involved in accident, however the fact remains that the claimants, who initially maintained the claim against the persons related with both the vehicles involved in accident, later on specifically gave up their claim against the persons related with the tractor. Taking the stand that the accident occurred solely for the negligence of the jeep driver, the claimants did not press issue No.2, about fault on the part of the tractor driver; issue No.4, about fault on the part of both the drivers; and issue No.7, regarding liability of the tractor insurer. Consequently, issue No.9 relating to want of driving licence with tractor driver was also rendered redundant.

The learned Judge of Tribunal found in issue No.1 that only the claimants were available as the heirs of deceased Amrik Singh at the time of accident, though it was noticed that the third issue, a girl child was born to the claimant No.1 Satender Kaur about 7-8 months after the incident. The learned Judge found in issue No.3 that the accident occurred for exclusive fault of the jeep driver.

On quantification of compensation in issue No.5, the learned Judge observed that the claimant Satender Kaur herself did not appear in evidence; and that admittedly she has gone abroad. The assertion of claimants on income of the deceased at Rs.3,500/- per month was rejected for want of cogent documentary evidence and the learned Judge put an estimate that an amount of Rs.500/- per month could be taken as contribution by the deceased towards maintenance of the family and then observed that the claimants were entitled for Rs.25,000/- under no fault liability and if the deceased was contributing about Rs. 500/- per month, the claimants were entitled for compensation in the sum of Rs.50,000/-. The learned Judge also observed that it was not proper to grant any amount towards mental agony because only the claimant No.1 could have proved this aspect.

In issue No.6 relating to ownership status of the jeep involved in accident, the learned Judge observed that NAW-1 Jagdish Lal asserted having sold the jeep in the year 1986 to Sadhu Singh though he admitted in the cross-examination of having not obtained any receipt; and that the non-applicant No.2 Jagdeep Singh admitted himself being the owner of the jeep and, hence, it was established that Jagdish Lal had transferred the jeep to Sadhu Singh and, therefore, non-applicant No.1 Jagdish Lal was not liable for compensation.

On the question of liability of the jeep insurer in issue No.8 the learned Judge observed that the jeep was insured for third party risk and the occupants of the jeep answer to the description of third parties and, therefore, the insurer would remain liable. The plea of insurer in issue No.10 for exoneration for want of intimation was rejected being not a valid defence permitted by law.

The Tribunal has, therefore, proceeded to make an award, though naming it a decree, in favour of the claimants in the sum of Rs.50,000/-, allowing Rs.25,000/- to the claimant No.1 and Rs.12,500/- to each of the claimants Nos. 2 and 3.

Assailing the award aforesaid, learned counsel Mr.Vijay Agarwal appearing for appellants has contended that the Tribunal has erred in awarding compensation only in the sum of Rs.50,000/- to the wife and children of 30 years old vehicular accident victim Amrik Singh who was earning a salary income of about 1,000 Dirhams per month at Dubai. Learned counsel submitted that examined at any standard and from any standpoint, the award remains too low and grossly inadequate. Learned counsel also submitted that the registered owner of the vehicle Jagdish Lal has erroneously been absolved of his liability and pointed out that the Tribunal has omitted to consider his specific admission that the registration of the vehicle stood in his name. In relation to the

liability of the insurer, learned counsel submitted that the insurer has not led any evidence in this case and remains liable to satisfy the entire award. Learned counsel submitted with reference to Clause 1(a) at Section II in the terms of the insurance policy placed on record that it covered liability in relation to occupants of the jeep too; and such was not a limited liability but risk was covered to the extent of liability incurred. Learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of Amrit Lal Sood & Anr. Vs. Kaushalya Devi Thapar & Ors.: (1998) 3 SCC 744.

Learned counsel Mr. B.S. Sandhu appearing for the non-applicant No.1 (respondent No. 4 herein) Jagdish Lal, registered owner of the jeep, has supported the impugned award with the submission that the vehicle had been transferred by him to Sadhu Singh; then, the non-applicant No.2 Jagdeep Singh was ultimately found in control and possession of the vehicle; and the non-applicant No.3 Kewal Kumar was found driving the vehicle only in the control and directions of the non-applicant No.2. Hence, according to the learned counsel, the registered owner was not in liability and the Tribunal has not committed any error in absolving him.

Learned counsel Mr.Sanjeev Johari appearing for the non-applicant No. 7 (respondent No.3 herein) jeep insurer, on the other hand, placing reliance on the decisions of the

Hon'ble Supreme Court in the case of New India Assurance Company Ltd. Vs. C.M. Jaya & Ors.: (2002) 2 SCC 278 and National Insurance Company Ltd. Vs. Keshav Bahadur & Ors.: (2004) 2 SCC 370 contended that in absence of any specific agreement to the contrary and for not charging of any extra premium, the liability of the insurer, if at all, shall remain limited as provided by the statute; and otherwise, with absolving of the non-applicant No.1, the insured in the present case, the jeep insurer does not stand in any liability. Learned counsel also urged that looking to the period of incident and exposition of law at the relevant time, a liberal view deserves to be taken and strict rules of pleadings and evidence deserve not to be applied against the insurer in the present case.

From the award in question and on the submissions made by the learned counsel for the parties, broadly three questions arise for determination in this appeal: (i) whether the amount awarded by the Tribunal towards compensation remains too low and inadequate and calls for modification; (ii) whether the Tribunal has erred in exonerating the registered owner of the vehicle of his liability towards compensation; and (iii) whether the liability of insurer in relation to the victim who was an occupant of the insured vehicle remains limited to the extent of statutory liability?

Having given thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is clearly of opinion that this appeal deserves to succeed with enhancement of the amount of compensation and holding the respondents liable therefor.

So far quantification of compensation is concerned, the approach of the learned Judge in abruptly picking up a figure of Rs.50,000/- to be awarded as compensation to the claimants is difficult to appreciate. It is true that the claimant No.1 Satender Kaur has not appeared in evidence but her father and cousin have appeared and have pointed out her having gone to Philippines where her brother-in-law (husband's brother) was settled. The fact that Amrik Singh, in 30 years of age met with his untimely end for the injuries sustained in the accident is not in dispute; nor is in dispute the fact that the claimants are the wife and children of the deceased. It is not the case of anybody that the claimants had any other source of income or any other economic support base. Though the claimants have not adduced cogent and convincing documentary evidence of engagement of the deceased Amrik Singh at Dubai and of his earnings being equivalent to Rs.3,500/- per month but on the facts and in the circumstances of the case and looking to the family he was supporting, even if the deceased be assumed earning

minimum wages, say only about Rs.1,500/- per month, and contributing only Rs.1,000/- per month to the family, the loss for the family in the context of the period of accident nevertheless stands at Rs.12,000/- per annum and there appears no reason to deny the claimants compensation for pecuniary loss on this basis minimum. The deceased was about 30 years in age and looking to the overall facts and circumstances, even when a multiplier of 17 is applied, pecuniary loss comes to Rs.2,04,000/- (12,000 x 17).

The learned Judge of Tribunal has further erred in not allowing any amount towards non-pecuniary loss at all for so-called want of evidence. With the factum of vehicular accident death of husband of the claimant No.1 and father of the claimants Nos. 2 and 3 being not in dispute, reasonable amount towards loss of consortium for the wife and loss of love, affection and guidance for the children of the victim ought to have been allowed. A reasonable component of funeral expenses also ought to have been provided. Having regard to the circumstances of the case and the period of incident, this Court is of opinion that an amount of Rs.25,000/- deserves to be allowed towards non-pecuniary loss for the wife and children of the deceased and further an amount of Rs.1,000/- deserves to be allowed towards funeral expenses.

The claimants are, therefore, entitled for compensation minimum in the sum of Rs.2,30,000/- (2,04,000/- + 25,000/- + 1,000/-) even on a conservative estimate. Thus, the amount of Rs.50,000/- allowed under the impugned award remains grossly inadequate than a just compensation admissible in this case and, obviously, calls for modification. The claimants are entitled for a further amount of Rs.1,80,000/-, over and above the amount awarded by the Tribunal.

So far the liability towards compensation is concerned, though the non-applicant No.2 Jagdeep Singh has been held liable for his admission that the vehicle was being plied at the relevant time under his control and directions but at the same time the non-applicant No.1, the registered owner, has erroneously been absolved by the Tribunal, though he stands in liability because of being the registered owner of the vehicle; and directly answerable for the damage to person or property caused by the use of the said vehicle.

In the case of Dhul Chand Vs. Kanti Lal & Ors.: 2005 RAR 114 considering the liability of the registered owner and transferee owner of the vehicle this court has observed thus:

> "Therefore, even if, the appellant would have proved handing over the actual possession of the vehicle to the subsequent purchaser, they cannot have avoided their liability. It is true that in view of the Division Bench decision of this Court in New India Assurance Co. Ltd. (supra) even if, the vehicle has not been registered in the name of the purchaser and the purchaser permits his

> employee to drive the vehicle and his driver causes the accident, then the said transferee is also liable vicariously, **but along with the registered owner."**
>
> (emphasis supplied)

In the case of Udai Singh & Anr. Vs. Bhana Ram & Ors.: S.B. Civil Misc. Appeal No. 100/1993, decided on 25.05.2007, while dismissing the appeal filed by the registered owner and transferee owner of the vehicle involved in accident, who were held jointly and severally liable for compensation along with the driver and alleged second transferee owner of the vehicle, this court has expressed the views thus:

> "This court is clearly of opinion that in the scheme of the provisions of the Motor Vehicles Act dealing with award of compensation for a vehicular accident, the interest of the claimants cannot be put to jeopardy on such propositions of alleged transfers of the offending vehicle under so-called agreements; nor the summary inquiry for award of compensation could be permitted to be converted into an elongated inquiry into the title of the vehicle. In such matters of alleged transfers under so-called agreements, the person or persons answering to the description of owner, whether as registered owner or for being in control and possession of the vehicle, remain liable for compensation jointly and severally to the claimants irrespective of their inter se arrangements."

In the present case, the learned Judge of the Tribunal has proceeded to decide issue No.6 in a rather cursory manner. It has been assumed that the non-applicant No.1 had

sold the vehicle to Sadhu Singh although he has admitted in cross-examination of having not taken any receipt for such sale. Then, although Jagdeep Singh non-applicant No.2 did not appear in evidence, yet on the basis of his reply averments, of himself being the owner of the jeep, it has been assumed that Jagdish Lal sold the vehicle to Sadhu Singh! It is extremely difficult to comprehend as to how on mere oral assertion of Jagdish Lal it has been held that he sold the vehicle to Sadhu Singh; and, above all, as to how on Jagdeep Singh admitting himself being the owner of the jeep, it could be concluded that Jagdish Lal sold the vehicle to Sadhu Singh? It is inexplicable as to on what basis the learned Judge has assumed existence of chain of transactions from Jagdish Lal to Sadhu Singh to Jagdeep Singh? There is no such evidence on record; and such finding cannot be reached even by way of inference.

In any case, even if Jagdeep Singh is held liable for his admission of using the vehicle as owner, on that basis alone, Jagdish Lal, the registered owner of the vehicle, cannot be absolved of his liability. The learned Judge has not even noticed unambiguous admission of Jagdish Lal in his cross-examination that the vehicle stood registered in his name at the time of accident.

The Tribunal has erred in law as well as on facts of this case in absolving the registered owner of the jeep involved in accident. Finding on issue No. 6 cannot be sustained and deserves to be set aside.

Though learned counsel for the insurer has attempted to assert that liability of the insurer, even if any, remains limited to the statutory liability but the fundamental fact remains that in this case the insurer has chosen not to lead any evidence at all. Therefore, the contention sought to be raised before this Court on behalf of the insurer particularly about limited liability remains hollow and baseless. The submission of the learned counsel for insurer for not applying strict rules of pleadings or evidence cannot be accepted to the extent that the insurer of the vehicle may be permitted to take a stand in appeal that was neither taken nor attempted to be established before the Tribunal.

It may be pointed out that in the case of C.M. Jaya sought to be relied upon by the learned counsel for the insurer, the Hon'ble Supreme Court has held,-

> “Thus, a careful reading of these decisions clearly shows that the liability of the insurer is limited, as indicated in section 95 of the Act, but it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability.

> This view has been consistently taken in the other decisions of this court."

Therefore, it is clear that although the statute provided for a minimum liability, the insurer was not prohibited to cover higher risk and, therefore, in such a case where the insurer wanted to take the plea that its liability was limited or that the risk in relation to the occupant of the vehicle was not covered under the policy in question, it was required of the insurer to have taken specific pleadings in that regard and then to have proved the essential facts by necessary evidence. The insurer having failed to do so, the contentions sought to be raised by it in this appeal do not merit acceptance.

Not only that the insurer has failed to establish essential facts by leading necessary evidence but further, a look at the copy of insurance policy as placed on record (at page C32/1) makes it apparent that the suggestion of its limited liability is not correct either. Learned counsel for the appellants has rightly pointed out that the clause in the insurance policy existing between the owner and insurer in the present case was clearly meant to provide unlimited coverage for the passengers in the vehicle not carried for hire or reward. The relevant term contained in the copy of the policy placed on record, under Section II reads,-

> "1. The Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of
>
> (a) death of or bodily injury to any person including occupants carried in the Motor Car provided that such occupants are not carried for hire or reward but except so far as is necessary to meet the requirement of section 92A and section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.''
>
> (emphasis supplied)

In the case of Amrit Lal Sood (supra) where the insurance policy carried similar kind of term, of coverage of 'any person'; and though the words "including occupants carried in the Motor Car provided that such occupants are not carried for hire or reward" were not there, the Hon'ble Supreme Court held,-

> "Thus under Section II (1) (a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the

> terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous."
>
> (emphasis supplied)

Explaining the principles that liability of the insurer depends on the terms of the contract between the insured and the insurer and that there is no prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk of gratuitous passenger could also be covered, the Hon'ble Supreme Court has pointed out in C.M.Jaya (supra) that the clause in the policy as available in Amrit Lal Sood was wider covering higher risk and, therefore, it made all the difference and else the liability of the insurer remains to the extent limited under Section 95 of the Act. Significant it is to notice that in relation to the decision in Amrit Lal Sood, the Hon'ble Apex has explained in C.M.Jaya that,-

> ''Thus, it is clear that the specific clause in the policy being wider, covering higher risk, made all the difference in Amrit Lal Sood case as to unlimited or higher liability. The Court decided that case in the light of the specific clause contained in the policy.''

It is also significant to notice that the clause contained in the insurance policy in the present case is even wider than

that was available in Amrit Lal Sood's case. In Amrit Lal Sood rather it was construed that the term "any person" would include the passenger in the vehicle. In the present case, the clause itself includes the occupant of the vehicle except those carried for hire or reward. It has not been shown in evidence that the victim was an occupant carried for hire or reward. On the contrary, the claimants' witnesses Jagdeep Kaur, another occupant of the jeep has said that her brother borrowed the jeep. Harbhajan Singh, AW-3 has specifically stated that Paramjeet Singh brought the jeep but not on hire. Guljar Singh AW-4 has stated that the occupants had boarded the jeep that was going to Sriganganagar and it was neither brought nor hired; however, he was not the occupant of the vehicle. In view of the testimony of AW-2 Jagdeep Kaur and AW-3 Harbhajan Singh and then for want of any evidence in rebuttal and for want of any evidence by the insurer, there appears no reason not to hold that the victim was an occupant in the vehicle not carried for hire or reward; that entire of his risk was covered under the insurance policy; and hence, the insurer remains liable to satisfy the entire award.

It is apparent that the submissions made on behalf of the insurer in the present case that for the decision in C.M.Jaya, the liability of the insurer be held limited cannot be accepted. Learned counsel for the insurer has also referred to

the decision in Keshav Bahadur (supra) but as already noticed above, for the specific clause in the policy covering the entire risk of any person including the occupants of vehicle not carried for hire or reward, the insurer remains liable to satisfy the award of compensation in the present case. It appears that conscious of its policy condition, the insurer chose not to lead any evidence in this case.

To sum up the discussion aforesaid, this court is of opinion that the quantum of compensation awarded calls for upward revision and the claimants are entitled for total compensation in the sum of Rs. 2,30,000/-; the registered owner of vehicle has erroneously been absolved of his liability; the submission of the insurer of its limited liability cannot be accepted; and the insurer remains liable to satisfy the award.

The Tribunal has allowed interest on the amount of Rs.50,000/- at the rate of 12% per annum from the date of filing of claim application; however, having regard to the enhancement being made herein and the period of litigation, it appears appropriate to allow interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application.

Before concluding, a fact is required to be noticed that it has appeared in the testimony of Guljar Singh AW-4 that, about 7-8 months after demise of Amrik Singh, the claimant

No.1 gave birth to another girl child named Pinto. The claimants have not impleaded this third child of the victim Amrik singh, said to have born after filing of the claim application, as a party though the claim application was amended later impleading other non-applicants. Be that as it may, in view of the enhancement of the award amount, it appears appropriate that while taking up its apportionment, specific provision be also made in relation to the said third child of Amrik Singh said to have born after his death. It has also been pointed out in the applications filed before the Tribunal that the claimant No.1 has gone to Philippines but the children were residing with their relatives in India. All of them must have attained majority by this time. It, therefore, appears appropriate that disbursement of the award amount be made, as far as possible, in their personal presence.

Consequently, this appeal succeeds and is allowed; the impugned award is modified; finding on issue No. 6 is reversed and the non-applicant No. 1 is held jointly and severally liable with the non-applicants Nos. 2, 3 & 7; finding on issue No. 5 is modified and the claimants are held entitled for compensation in the sum of Rs. 2,30,000/-; and over and above the amount of compensation allowed by the Tribunal in the sum of Rs.50,000/- together with interest at the rate of 12% per annum, the claimants are awarded compensation in

the sum of Rs.1,80,000/- together with interest at the rate of 7.5% per annum from the date of filing of claim application.

The insurer, respondent No.3 shall deposit the amount payable under the modified award within thirty days from today with the Tribunal; and the Tribunal shall issue necessary orders for appropriate apportionment and disbursement of the award amount keeping in view the observations made hereinabove. In the circumstances of the case, the parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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